UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS, NEVADA

ORACLE USA, INC. et al., Plaintiffs, vs. RIMINI STREET, INC. et al., Defendants. And related cases and parties	CASE No. 2:10-CV-0106-LRH-PAL Las Vegas, Nevada August 5, 2010 9:30:20 a.m.

HEARING ON MOTIONS

THE HONORABLE PEGGY A. LEEN PRESIDING
MAGISTRATE JUDGE OF THE U.S. DISTRICT COURT

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LAS VEGAS, NEVADA THURSDAY, AUGUST 5, 2010

PROCEEDINGS BEGAN AT 9:30:20 A.M.

THE CLERK: All rise.

THE COURT: Good morning. Please be seated.

THE CLERK: Your Honor, we are now calling the hearing in the matter of Oracle USA, Inc., et al. versus Rimini Street, Inc., et al. The case number is 2:10-CV-0106-LRH-PAL.

Counsel, I will now ask you to make your appearances for the record. Beginning with plaintiffs' counsel, we would like to start with counsel in the courtroom followed by counsel on the telephone, please, and then defense counsel.

MR. NORTON: Fred Norton of Boies, Schiller & Flexner for the plaintiffs.

MR. POCKER: Your Honor, Richard Pocker also of Boies Schiller & Flexner on behalf of plaintiff.

MR. MAROULIS: On the phone, Your Honor, it's James Maroulis from Oracle for the plaintiff. And thank you for permitting me to appear via telephone.

MR. HIXSON: And also on the phone, Your Honor, is Tom Hixson with Bingham McCutchen for plaintiffs. And likewise, thank you for allowing me to appear telephonically.

MR. BURESH: Your Honor, on behalf of Rimini Street Eric Buresh and Rob Reckers of Shook, Hardy & Bacon.

And Mr. Reckers will be primarily doing the speaking

on behalf of Rimini Street today.

THE COURT: This is on for a status check on your competing proposals for discovery plan and scheduling order and limitations on discovery -- that is expanding the limitations deemed presumptively reasonable by the rules.

And also in the meantime I've received Defendant Rimini Street's motion for protective order regarding the location of depositions. I have read the moving and responsive papers, but if there's anything you want to add to your papers, counsel, this is your opportunity to do so.

Mr. Reckers.

MR. RECKERS: Thank you, Your Honor. And I understand the Court's time is valuable so be very brief.

There's -- we made a number of attempts to resolve the issues raised by the protective order. Really two points here. One, our client believe they have a substantial interest and important issue of protecting their witnesses, their employees from this unnecessary stress that happened to have --

THE COURT: What do you normally notice depositions when you notice them, counsel?

MR. RECKERS: Normally what happens is the parties' reach an agreement at some point early in the process where the corporate witnesses are presented at their own offices and that's been my understanding of the general practice in

Federal Courts throughout the country. That's certainly been my practice, the practice of the members of our court team. You reach agreement, corporate witnesses a re presented at their own --

THE COURT: But your client is headquartered here in Las Vegas?

MR. RECKERS: Pardon me?

THE COURT: Your client is headquartered here in Las Vegas?

MR. RECKERS: They are, but they have substantial operations in the Bay area and the particular witness in this case, the designee we had for the 30(b)(6) --

THE COURT: You can designate anybody you want for a Rule 30(b)(6) witness, but you have complete control of that. The other side gets to tell 'em the subject matter on which they want deposition topics to be addressed and you can educate anybody of your choice to respond.

MR. RECKERS: Yes, Your Honor.

For these particular topics the best person was in the Bay area, so we chose someone in the Bay area. Both firms for each side have counsel in the Bay area and it makes sense to be in the Bay area. I don't know that that's in dispute. I think the issue here is what --

THE COURT: Your office versus their office.

MR. RECKERS: Exactly, Your Honor. Exactly.

THE COURT: Your San Francisco office versus their San Francisco office, .6 miles away.

MR. RECKERS: Exactly. Exactly.

THE COURT: And the process of appearing in front of opposing counsel's counsel in their own law office is so intimidating to this witness that you felt compelled to bring this to my attention despite the plaintiffs multiple efforts to compromise?

MR. RECKERS: I think that is fair. We -- but we also made offers to compromise and we didn't see any reason to deviate from the general practice to be best served. Two points. One that --

THE COURT: Well, your corporate designee doesn't operate out of your office, does he, sir? Or she?

MR. RECKERS: No, he does not.

THE COURT: So you're not asking for it to be taken place at the location where the designee is?

MR. RECKERS: That's correct.

THE COURT: You're asking for it in your office?

MR. RECKERS: We're asking for our office as perhaps a proxy consisting with the general practice. I understand the rule is at the location of the work or the home that furthers, you know, the general point I'm -- that I'm addressing here which is the comfort of the witness. Comfort of the witness leads presumably to the best testimony, most

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accurate testimony which is, you know, the goal of discovery in the first place.

So we had suggested that our office in San Francisco as the best place for the deposition. We didn't see anything on Oracle's side which would --

THE COURT: Who has the burden of persuasion on a motion for protective order?

MR. RECKERS: Certainly -- certainly it is the moving party.

THE COURT: So the fact that they, you know, tie goes to who?

MR. RECKERS: I -- yeah. To the extent we can establish good cause, then we certainly do not prevail on the motion.

THE COURT: Okay.

MR. RECKERS: So the -- the only point that I have is we believe there is good cause, respect for the -- and less -- the burden on the witness and to the procurement of the accurate testimony.

I thank the Court for its time.

THE COURT: Thank you, sir.

Counsel for plaintiff, is there anything you want to add to your papers?

MR. NORTON: No, Your Honor.

THE COURT: Your motion for protective order is

denied. I find that the defendant has not met its burden under Rule 26(c) for a protective order to issue. Broad allegations of harm, unsubstantiated by specific examples of articulate reasoning are insufficient to support a protective order. The fact that the witness might be, quote, "uncomfortable" or might be, quote, "more comfortable somewhere else" is insufficient to require a protective order, for the Court to require the witnesses to appear in the law offices of plaintiffs' counsel -- or excuse me, defendants' counsel, a mere blocks away from the location where it's noticed after considerable compromise by the plaintiff.

I'll hear from you now concerning your respective request for discovery plan and scheduling order deadlines. I glean from the fact that you are engaged in related discovery, that is set for trial in November, that this has been a contentious litigation, and you expect this to be equally contentious. And so you're both asking for a lot of time and you're both asking for a lot more time than is deemed presumptively by the local rule. And while it is not my intention to unreasonably compress the amount of time for you to conduct your discovery and therefore make it more expensive and onerous on everyone, my experience, frankly, and I've done complex litigation as a litigation lawyer, is that the more time you have the more things you figure out

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how to do and it has a self-fulfilling prophecy.

So let me hear specifically what it is that plaintiff is requesting and why it is that I should grant your request for 15 months in which to complete fact discovery, followed by six months in which to complete expert discovery?

MR. NORTON: Thank you, Your Honor.

We do understand that what we're asking for is significantly longer than what is presumptively reasonable under the local rules. I think the fact that the parties have agreed on something that's already substantially longer than the local rules would provide in a case that -- we all have assessed the case in a similar fashion, that it will require substantial discovery. It is a very complex case, well outside the norm. So the fact that our dispute is actually rather narrow, I think indicates the propriety of our request.

And then the dispute of course is the difference between 12 months of fact discovery, as proposed by the plaintiffs, the 15 is proposed by us, and we propose six months of expert discovery as opposed to three from the defendant.

And I think that -- I can certainly justify either of those proposals, but the fact that we are so close really ultimately, I think indicates that we've all recognized it's

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going to take a lot of work to get to where we need to be.

THE COURT: I'll tell you what my problem is, and I tell folks this about three times a week generally speaking so Mr. Pocker has probably heard this before.

My experience is, no matter what amount of time a Court gives litigants they come back and say it can't be done and they need more time.

MR. NORTON: I understand that and I have certainly made that request myself in cases.

I think here, it's a little unusual in that we do have the benefit of another case and another case that involves --

THE COURT: Took 16 months to get one deposition and 17 months to get one deposition because it went up from the Magistrate Judge to the District Judge to appeal a routine discovery order, and then up to the Ninth Circuit, and then it came back when the party opposing stipulated the dismiss.

MR. NORTON: That's correct. That was the defendants in this case had opposed that discovery and it did take that long. But when I refer to the other case, certainly that example is salient and we pointed that out in our May 13 submission, but when we focus on the discovery that under the best of circumstances we would need to take and that we would take as efficiently as possible, our bench mark is the SAP

litigation. And although there are certainly some differences between this case and that one, we have learned a great deal from the work that was done in that case. And the nature of the discovery here is not the typical discovery.

As I think I mentioned when we were here last time, the types of documents that will be produced and that will be critical to the claims are technical documents. They're not the sorts of documents that you just sit down and read. Although emails and instant messages and PowerPoints will be part of the discovery and part of the proof at trial, there will also be computer log files. There'll be the need to analyze software code and compare competing versions of software code to determine whether or not there's been copying. That takes a lot of time to analyze, but before you can even analyze it, it takes time to locate the process, to get in the form that experts need in order to actually do their jobs. And what we learned in the other case was that that is a process that you can't -- you can't skip steps and you can't compress steps that -- and which is why we propose the foundational discovery first here. So let's first figure out what types of information exist, where it exists, how we can most efficiently get it to the other side and vice versa and then we can --

THE COURT: And the foundation --

MR. NORTON: -- begin the analysis.

THE COURT: -- and with specificity, what foundational discovery do you expect?

MR. NORTON: What we did here was we served I believe 14 interrogatories on the defendants that were focused on understanding precisely what are the computer systems that you have that would have information that's relevant to this case? Where are they located and how are they -- what is the architecture of that system? We asked about their development process in the sense of how do they get the software code, the support materials, the updates that they purport to create on their own? How exactly do they get those to their customers? What is the delivery process? We wanted to understand what kinds of log files did they maintain? What are the computer records that will show us when they accessed Oracle's websites? How they accessed Oracle's websites? What they downloaded? For whom they downloaded it, and where they put it? Because --

THE COURT: Have you reached an agreement with respect to ESI?

MR. NORTON: We have not reached an agreement with respect to ESI. The -- and that is part of our, I guess, discomfort with the defendants' proposal is that our goal was to resolve these foundational issues early on and figure out what we had to deal with. And part of that we thought was to resolve the ESI issues.

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I should say with respect to the conventional ESI, yes, we have agreement. Emails, the conventional documents that we're all accustomed to was not difficult.

But what we think are going to be critically important in this case are server files. And with respect to server files, we don't have an agreement. With respect to preservation issues we don't have agreement. And after an extended back and forth on those issues, the defendants took the position that we would need to proceed with formal discovery to determine what precisely as been preserved, how it's been preserved, where it all is. And so we noticed our 30(b)(6) deposition and unfortunately that deposition did not go forward as scheduled. It will go forward next week now, because of the defendant's motion for protective order.

So we've made some progress on what I would think are the easier issues. But on the big issue of the computer records that would show us how they actually accessed Oracle's copyrighted information and then what they did with it. They have neither identified what precisely that information is, nor told us precisely where it may be, nor produced any of it. And that will be --

THE COURT: And when -- excuse me. When did you serve your interrogatories asking for these foundational matters?

MR. NORTON: The day of our Rule 26 conference,

which if I recall correctly was April 29th.

THE COURT: And so you received responses to those?

MR. NORTON: We have received responses. I would -- we're not satisfied with those responses, but we'll work with the defendants to try to get the information that we need. The overarching problem that we have with those responses, to make it concrete, is that the defendants appear to have responded across the board with respect to what they do today, what their systems are now.

THE COURT: As opposed to historically?

MR. NORTON: As opposed to historically.

THE COURT: And is that one of the issues that you'll be addressing with a Rule 30(b)(6) designee?

MR. NORTON: It would be covered to some extent by that 30(b)(6) deposition and we certainly -- what we hoped to do is get fuller answers to the interrogatories and then proceed with a 30(b)(6) deposition. That was the -- the deliberate structure was get the interrogatory answers, that will help us identify the topics and how to go about the deposition, and then proceed.

Given where we are now and the time that's passed, we probably have to make some decisions about whether we wait further. But the 30(b)(6) would inform some of that, but we were really focused on the preservation issues since that's where we lost traction at a certain point on the meet and

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confer. And so once we were unable to resolve what is that exactly they're preserving and how they're preserving it and where it all is, and so we'll just do a 30(b)(6) for that. And that is the 30(b)(6) that was before the Court this morning.

But we certainly intend to take a 30(b)(6) to understand these other foundational issues and that will, again, inform how we go about the next step, but that -- that's a gaiting item and once we get through it there is this very substantial task of analyzing a very substantial amount of data.

I should say Oracle has produced those types of log files to the defendants. The log files that show, from Oracle's side, when, as best we can tell, the defendants accessed the system. But we don't have anything comparable from the defendants and we need it.

So that is a critical part of our thinking about this particular discovery plan. Fifteen months because we need to actually figure out what there is, get it, analyze it, and then question people about it. And if we were to just take depositions of technical people of the defendants about what their processes are, without having the benefit of having analyzed this information and seeing the similarities between this computer file that they delivered to their customers and the computer file that they downloaded from

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Oracle, without the opportunity to do that, the opportunity to understand their development processes, then we'll be handicapped. So it does, I think, have to be, if not a formally staged process, an informally staged process to get there.

So I am certainly sympathetic to the Court's concern that no matter what you give us we will come back, but we did, in coming up with a proposal that we submitted on May 13, we did try to come with a proposal that would avoid the need for us to come back. Obviously we can't guarantee that will happen, but I am far more confident that if we were to go with defendants' proposal it will have to be that, based on what we have to do, what they've given us so far, and, frankly, the other discovery disputes that we've had today. It does not suggest that --

THE COURT: How far along are you in resolving or coming to an impasse with respect to your discovery disputes today?

MR. NORTON: I would say that we are at the very first stages. Both sides have taken the time to digest what they've received. We have issues with what they have given to us. Yesterday they wrote us a letter identifying issues they have with what we've done. That's part of the normal process and by no means surprising, but we are now, beginning to talk about what more we want from each other with respect

to our initial discovery requests. And so we have a good relationship with defendants' counsel. We'll make a lot of progress on that I'm sure, but we're at the very beginning.

And so going back to the Court's first question, why should we be given so much time? Again, I think the -- that the technical discovery is a substantial part of it and that is probably the primary reason, the need to get through that. But there will also need to be a number of depositions, there'll need to be some third-party depositions and we'll have to get those scheduled and work through those, and that will be a substantial part of this as well. So that is significant.

I think that if we can lay out a 15-month time frame to do that, we can do it a lot more efficiently. If we try to compress it, then we -- we can't count on the possibility, the prospect that we would come back to Your Honor and ask for more time and we'd be fine. So if you give us something less than 12 months or less than 15 months, then we all have to plan accordingly and we have to -- rather than do it in the -- in the phases that I had suggested, we'll just have to do it in sort of a land rush fashion and that will be more expensive. It will probably lead to more disputes because, frankly, we won't always know what we're talking about. And it may mean that we'll be in front of Your Honor, more often because we'll have more disputes.

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I think that here what will compress the expense or put a limit on the expense is to limit the discovery to what's appropriate in terms of interrogatories, depositions, document requests. And then within those limits, give us the time that we need to work through that information.

And so with respect to the discovery limits, again, we're not very far apart. We're in agreement on request for admission. We're in agreement on document requests. We want 75 interrogatories, they want 50. Between 50 and 75. I think it makes a difference to me and how I can prepare my case and get what I need, but I don't think that it is the sort of -- the difference that will, in the defendants' words, bury them. It's the difference that helps us do this more efficiently.

In terms of hours of deposition, we say 200, they 165. Again, makes a difference to me. We plotted out what we thought we needed, the number of depositions, how long we thought they would take, and 200 seemed like a number that we could live with and not come back to the Court for more. But 165 is a number that we thought was too aggressive. And once more to parcel it out into these compartments, as the defendants propose, that allow us to use so many hours for 30(b)(6) depositions and so many hours for third parties, it's just going to lead to inefficiency. There's -- I have no reason, sitting here today, to think that that's the right

way to divvy it up, so we should just have the flexibility to do so.

But I think the limits that we proposed are reasonable ones. They're not that much greater than what the defendants have proposed and that's really where you can control the amount of expense that goes into the discovery is that's really the driver.

So for all those reasons, we would suggest that the proposal that we originally gave you back in May is the right way to go on this for this case.

I'm happy to answer any other question.

THE COURT: No, I've been asking you as we've gone along.

MR. NORTON: Thank you.

THE COURT: Thank you, counsel.

And let me hear from Mr. Reckers. Will you be addressing the defendants' position?

MR. RECKERS: Yes, Your Honor.

THE COURT: First of all, let me just ask you, do you agree that it makes sense to engage in the foundational discovery and kind of phase this in some respects, although not inflexibly?

MR. RECKERS: Absolutely. And since we were -- we were last before you, Your Honor, we have been engaging in these foundational discovery. We responded, I think that very

day with our interrogatory responses. In Rimini's position they were -- they were comprehensive, they were complete. Today's the first day that I've heard any dispute from counsel from Oracle that there was any problem with our -- with our discovery responses today and -- but we're happy to address them and we're happy to work forward any deficiencies they may perceive. But, again, I hadn't heard that before today.

Rimini Street has produced -- it's a small company, they've produced about 50,000 pages of Bates stamped documents since we were last before you. A substantial production, I expect there will be a substantial production in about -- another substantial production in about two weeks as we -- as we get documents through the process.

The real issue for Rimini Street is, this litigation is causing them to lose sales every day. We all know the old axiom, justice delayed is justice denied. That really is salient here because Rimini Street, you know, is in the business of supporting the Oracle software. Customers see that Oracle and Rimini Street are in this litigation and they are less likely to do business with Rimini Street.

So our proposal -- and again, as Mr. Norton says we're fairly close, but to force the parties to be efficient, and that's really key for us. Force efficiency by setting a schedule with limits. Yes, in time. Yes, in scope. And that

really is the important thing. And I believe that Rimini Street has demonstrated, through their responses to the interrogatories without any extension to the first -- the first, you know, 30 days after they were served or 33 days or whatever it was, serving the documents and the responses in our opinion, full and complete, but of course we'll work if there are -- there are areas of additional inquiry. There was no other written discovery that was served. There's no other -- there was no back and forth on things that they wanted and there was no responses sent.

So, you know, the deposition issue aside, which is -- as Mr. Norton explains the preservation issues, the foundation of the claims and defenses, well, they had noticed any additional depositions. There aren't other notices pending. We're happy to provide information to move this case sufficiently because that's in my client's interest, trying to protect ourselves to get this wrapped up and take the cloud off of -- off of the business.

THE COURT: So that behooves you to try to work out discovery disputes so that you don't have built-in delays by filing motions to compel or motions for protective order that are designed to -- by necessity, they take time to brief back and forth, and they take time for the Court to decide, and they -- you get in the cue depending on what else I have on my calendar.

MR. RECKERS: I understood, Your Honor. I understand, Your Honor, and your point is well taken.

And as we've agreed with Oracle, that deposition will go forward next week and hopefully the scheduling of additional depositions can go more smoothly.

THE COURT: I'm just testing, you know, you want to move this case but that requires a certain amount of flexibility and cooperation if that's truly your design.

MR. RECKERS: Yes, Your Honor. I understand. And let me point out, as Your Honor pointed out last time we were here, it's sort of unusual for the defendant to be pushing a case and the plaintiff to be requesting the longer schedule. And so that flows into the dynamic I mentioned earlier about the real business impact of this litigation.

Mr. Norton discussed -- there's an issue about preservation. There's been substantial meet and confer on that. I hope this deposition going forward will give them an understanding. It's not that we didn't let them know what we were -- what we were preserving or not preserving, but these are fairly complex, you know, technical operations and we need to bring in an IT professional to explain how software's sold -- or how software is stored and where it's stored and how it's moved around. So I don't want to leave the Court with the impression that we're not working together on that. We just need to have the IT professional come in and explain

what's going on, then they can tailor their requests for things to be preserved or collected or produced in a certain manner. So --

THE COURT: And are you prepared to proceed with that next week?

MR. RECKERS: We are. We have agreed on a date, the end of next week and --

THE COURT: Excellent.

MR. RECKERS: -- in San Francisco. So that's the plan at the moment.

So again, just going back to the -- you know, my fundamental point which is efficiency, to give 200 hours of unfettered deposition time leads to perhaps inefficient use of those depositions. Federal rules for general practice is about 10. We also are using a numeric limit. We've only got 160 employees, 15 personal depos seems reasonable given the size of our company, which is great expense if they were to use 200 depositions for 40, 40 different four-hour or five-hour deposition. I mean that --

THE COURT: You haven't really had discussions about who they want to depose and how many nonparties, how many parties or anything like that as of yet, have you?

MR. RECKERS: Not yet, Your Honor, no.

THE COURT: All right. You just fear that your company will be crippled because you have a small number of

people and that their time might be tied up?

MR. RECKERS: Yes, Your Honor. That's --

THE COURT: Okay.

MR. RECKERS: -- that's exactly the motivation behind our deposition, the buckets. The 15 personal depos, 15 hours of 30(b)(6) time, 45 hours of third-party deposition time, and then unlimited time or, you know, unallotted time for expert discovery. So we're talking about a lot of hours. We just want the protection of the buckets to avoid any kind of excessive use of a number and of course lead to escalating costs. So really that's -- that's our position.

I don't think we are -- I agree with Mr. Norton, that we're not that far apart. I agree with Mr. Norton that we have a good relationship, that we're working together. Hopefully that this litigation will not be as contentious as the SAP litigation was and we can, you know, move forward.

I'll note that, you know, you mentioned Mr. Raven's deposition that took so long. That was other counsel. When my counsel -- when my firm joined we settled that dispute. Mr. Raven was presented two weeks ago for two hours before SAP and Oracle's counsel. He was deposed for, like I said two hours on the issues of -- that the judge ordered in that case.

So ultimately it comes down to protecting my client through requesting an efficient schedule and scope of

discovery.

THE COURT: All right. Thank you, counsel.

MR. RECKERS: Thank you.

THE COURT: I appreciate the civility with which you've presented your respective positions and I guess the questions that I were asking you -- or pointing out the -- how sometimes courts enter orders that make people at each other's throats trying to give you what you want and trying to get decisions for you, but giving you unrealistically short deadlines that, by necessity, make everybody scramble and cause problems.

I'm satisfied that you are working in good faith with one another and that you have the same objectives and rather than enter a discovery plan scheduling order that's written in stone right now, what I propose to do is hold monthly status conferences with you and address the issues as we go along and try to address the issues without the necessity of filing formal motions to compel or motions for protective order and address the -- as -- so I'm going to allow you to do the next 30 days of the foundational discovery that you have in mind to take the Rule 30(b)(6) designee, meet and confer with one another concerning the adequacy of the foundational discovery that's been served and responded to to date. And then I'll hear from you concerning any disputes that are impeding your ability to move forward

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to the next level and what you think a reasonable time frame is, and so I'll adjust and give you time as we go along, rather than write something in stone that you can't live with. Okay?

And I don't intend to micro manage. I mean you're excellent lawyers, I'm not going to tell you how to do it and when to do it. But what I will do is give you a forum for having discussions in having the discovery progress in an orderly manner and resolving your disputes as we go along through a more informal process rather than the necessity of formal briefing.

So I do that routinely in complex cases. It's -- generally speaking it works out and it moves you forward and discuss -- causes you to talk to you each other and discuss things as you go along. And so -- and if you don't need a status conference, if you're working steadily or you don't have any disputes, I'm happy to say I don't need to hear from you. But if you do need direction from the Court or you need a decision on some issue in which you've genuinely met and conferred and reached an impasse, then I'm here to resolve those as we go.

So what I prefer to do is have you prepare a joint status report a couple of days before the status hearing, telling me what you've done, what you propose to do, whether you have any disputes, and if so, your efforts to resolve

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them. If you reach an impasse or you haven't, and how that impeding or preventing you from doing something else that you need to do in the case. So I can hear from you and, frankly, it also requires you to do things between the status conferences to make sure that you are progressing and attempting to meet the schedule and complete the discovery within a reasonable period of time.

So 12 months is a lot, 15 months is more. The case may very well warrant that amount of discovery. From counsel for defendants standpoint, you haven't heard the specificity, what it is they want to do, and I have no -- right now just entering an arbitrary, you can have 25 depos or you can have X number of hours, doesn't seem to be a reasonable approach. Let me see what you want to do and as each side proposes discovery, if you are unable to resolve it, I'll resolve it for you.

Okay. So, Mr. Miller, why don't you give us a date in approximately 30 days and we'll have a status conference and we'll resolve as we go.

THE CLERK: Your Honor, we'll set this matter for a status conference on Thursday, September the 9th, 2010, at 9:30 a.m.

Counsel, please file your joint status report no later than Tuesday, September 7th, 2010, by close of business, which is 4:00 p.m. Pacific Time.

THE COURT: And, counsel are all welcome to appear telephonically if you would prefer to do that, to save the cost and fees. It's not my intention to cause you busy work or to micro manage what you do, but to make sure that you are making progress, that you are working, and that if you have discovery disputes they are resolved, and to the extent that's possible, without the necessity of formal briefing. There are going to be issues that are just routine discretionary calls that you need to state your respective positions in a joint status report. I'll decide them. If it's an issue that is unique or requires points and authorities, of course you have the ability to file whatever motions you deem appropriate and points and authorities supporting your positions. But, the routine discovery disputes about what you get and what you don't and what's a routine scope and so forth, are things that I'm willing to decide on joint status reports and oral arguments and without the necessity of formal briefing.

Yes, sir.

MR. BURESH: Your Honor, if I may would it be possible in anyway to perhaps set a back-end goal, like a -- not necessarily discovery closes or expert discovery closes, but perhaps even just setting the concept of a summary judgment type setting where the parties should be ready to present summary judgment motions by a date certain. And what

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I'm getting at is, as we proceed under this regime -- and I understand where the Court's coming from, but as we proceed under this regime there is really no visibility as to when this process could or should end. Nothing that Rimini Street can take back and say with some certainty, this case should be --

THE COURT: You may not get 12 months is what I'm telling you. I'm going to hear from you as we go along. But I appreciate that, but you haven't also told me do you intend to file summary judgments and if so on damages, liability, both, do you need experts or you don't need experts in order to do the summary judgment?

MR. BURESH: Well, right. Maybe --

THE COURT: I can't give you that off the top of my head, so --

MR. BURESH: Perhaps summary judgment is a bad example, but perhaps even a pretrial or trial date. I know the trial date would require interface with the District Judge, but even setting a pretrial hearing conference or something at some date certain that the parties can look to to say, we know at this point that the case should be reaching a termination point by some date certain. Would at least provide some level of planning ability within the business.

As it stands now, I understand it may be less than

12 months, I understand it may also be significantly more than 12 months depending on how things progress, but there's no ability to plan in the structure that we're discussing.

THE COURT: After I hear from you about the foundation -- this is going to be critical, frankly, from my point of view, is the next status conference in 30 days because by then you will have engaged in the financial -- the foundational discovery that you both want that's necessary to get the case off the ground. And you're either going to have a good handle on what you need to do by then or you're going to have disputes which will put a bottleneck in the process. And so assuming that you both make good progress and you have the foundational discovery that you need in order to more fully prepare this case for trial, I would prefer to enter a concrete discovery plan and scheduling order at the next scheduling conference. But I'm not going to enter one without knowing whether or not you have massive problems at the front end of the case that make any schedule unrealistic.

MR. BURESH: Thank you, Your Honor.

THE COURT: I'm not trying to be too general but I'm also trying to give you what my goal or my objectives are here, is to resolve these things that are the bottle -- that are potentially the bottleneck, are you actually moving forward with the case?

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MR. BURESH: No, it actually helps me understand your thinking better to understand that we're moving towards a set schedule.

THE COURT: Sure. I don't want to leave this open-ended and both -- and lawyers need deadlines.

MR. BURESH: Right.

THE COURT: But right now I don't have a handle on it and it sounds like you don't have a handle on what the universe of materials that you're going to need as a preliminary matter in order to go forward. And once you know that and you should know that within the next 30 days because that's my charge to you, is do the best you can do as much as you can to conduct and come to a conclusion with respect to the foundational discovery issues, then I can give you more guidance and give you a plan.

MR. BURESH: Yeah. My understanding from the earlier discussion was that we were going to be rolling along month by month, but your last comments explain that we're moving towards a place where you'll enter a schedule. That makes perfect sense to me.

Thank you.

THE COURT: Okay. All right.

All right, Mr. Miller, we've got a status hearing date and status report date and I just ask, counsel, make sure you confer in advance so that you can submit a joint

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status report and neither side is sandbagged by what the other side wants included in the status report. Okay.

So, again, we'll see you back in 30 days and we'll go from there. And you may appear telephonically and we'll give you the instructions for a central calling number if that's what you prefer to do.

MR. NORTON: Thank you, Your Honor.

THE COURT: Thank you. Good day.

MR. HIXSON: Thank you, Your Honor.

THE CLERK: All rise.

PROCEEDINGS CONCLUDED AT 10:07:56 A.M.

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CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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Kay McCrea — 9/6/10
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